I do not see that that case can be distinguished from the present case. This particular branch of the subject was very carefully and fully discussed in the Irish case of *Keegan v. Dawson*[5] and from the reading of this case, the respondent's argument in this connection — though ingenious — seems contrary to the interpretation of the Act according to high authority.

If, then, the underlying basis of the argument cannot be substantiated by authority, I do not think the effects of these arguments can be maintained either. To my mind the references in section 10 and section 35 of the old Act are not to be read as restricting the dependants to those resident in the Colony or reciprocating countries nor that payment can only be made to dependants outside the Colony where machinery for such payment exists in a reciprocating country. To my mind these provisions mean what they say. In the first case the section provides that rather than go through an elaborate and complicated process of obtaining evidence in another country by some form of commission, a simple and easy method of disposing the case is provided. Similarly the purpose of section 35 is to provide a simple method of making payment and preventing the hold up of payment in cases where the Commissioner might otherwise have doubts whether the right payment goes to the right recipient. The court is — as it were — safely discharged without being put itself to the considerable trouble of ensuring that the money reaches its correct destination. In this connection the *dicta* on the manner of interpreting the Act (and thus by analogy our Ordinance) referred to above — as quoted in *Willis* — are very much in point — in particular the *dictum* of Romer L.J. in *Smith v. Coles*[6]:—

"It ought to be remembered that the Workmen's Compensation Acts are expressed not in technical but in popular language, and ought to be construed not in a technical but in a popular sense."

There is, however, still the practical objection about the nature of the evidence submitted, and in this respect, the respondent must be upheld. The taking of evidence is governed by the Workmen's Compensation Rules which by rule 38 applies certain sections of the Civil Procedure Code, *inter alia*, section 1190. These have been repealed by the immediate predecessor of the present Courts Ordinance and replaced by the District Court Rules where the appropriate orders are Orders 23 and 24. The material rule is Rule 15 of Order 24. Under this an affidavit can be taken, but the statements submitted to me do not comply with the requirements of such affidavit, and, therefore cannot be accepted. Therefore, when this point has not been waived, it is not possible for me to accept it that there is sufficient evidence of dependancy of applicants and consequently, the applicants' claims must fail on that point.

If however the facts can be evidenced by say production of proper affidavits, there does not seem to be any reason why the applicants' claim for payment should not be considered nor payments made — though no Commissioner for Workmen's Compensation is known to exist in China. The procuring of proper affidavits might be a matter — in places such as China and Indonesia — of great practical difficulty, unless legislation were introduced providing some simple machinery or providing some means of avoiding the present difficulties, but in theory it is quite possible to do this.

The points raised are however of considerable interest in a place like Singapore where so many workmen have come from overseas and leave their dependants behind, for example, in China and Indonesia — places where there are apparently no comparable systems of workmen's compensation or systems whereby evidence can be taken in a manner to satisfy the local courts.

Solicitors: *Rodyk & Davidson.*

PUBLIC PROSECUTOR v. SOONG CHAK SUNG

[C. A. (Pretheroe Ag. C.J., Wilson and Spenser Wilkinson JJ.) July 12, 1955]

[K.L. — Criminal Reference No. 1 of 1955]

Penal Code s. 411 — Dishonestly retaining stolen property — Possession of stolen property — Burden of proof of guilty knowledge — Explanation of accused.

This was a reference under s. 34 of the Courts Ordinance, 1948, of an appeal heard by the High Court against the conviction of the respondent on a charge under s. 411 of the Penal Code. (The point of law involved in the appeal which it was sought to have determined by the Court of Appeal was certified by the Public Prosecutor as follows: "Whether or not Mr. Justice Bellamy was correct in stating the law to be as follows:— 'if he (the accused) gives an explanation which in the opinion of the jury may possibly be true although they do not necessarily believe it then the Crown cannot rely upon the presumption and it must prove the guilt of the accused just as in any other criminal case'."

Held: the passage from the judgment of the learned Judge was not a correct statement of the law and the proper test to be applied in such cases is that laid down in R. v. Aves[2].

Cases referred to:—

(1) *Wang Kia Heng v. Public Prosecutor* (1951) M.L.J. 109; 2 M.L.R. 119.

(2) *Rex v. Aves* (1950) 2 All E.R. 330; 34 Cr. App. R. 159.

(3) *Rex v. Garth* (1949) 1 All E.R. 773; 33 Cr. App. R. 100.

(4) *Mohamed Yatin v. Public Prosecutor* (1950) M.L.J. 57; 1 M.L.R. 7.

CRIMINAL REFERENCE.

E. Brown (Federal Counsel) for the appellant.

R. Ramani for the respondent.

Cur. Adv. Vult.

The judgment of the Court of Appeal was delivered by:—

Spenser Wilkinson J.: — This was a reference under section 34 of the Courts Ordinance, 1948 of an appeal heard by the High Court on the 1st of November 1954 against the conviction of the present respondent by the Sessions Court on the 18th of May 1954 upon a charge under section 411 of the Penal Code. The point of law involved in the appeal which it was sought to have determined by the Court of Appeal was certified by the Public Prosecutor as follows:—

"Whether or not Mr. Justice Bellamy was correct in stating the law to be as follows:— 'if he (the accused) gives an explanation which in the opinion of the jury may possibly be true although they do not necessarily believe it then the Crown cannot rely upon the presumption and it must prove the guilt of the accused just as in any other criminal case'."

This Court is unanimously of opinion that this passage from the judgment of the learned High Court Judge was not a correct statement of the law. Substantially the same question was referred to the Court of Appeal in 1951 in the case of *Wang Kia Heng v. Public Prosecutor*[1], although in that case it was section 34(1) of the Minor Offences Ordinance which was in question. The Court of Appeal in that case laid down as follows:—

"In our opinion, the proper test to be applied in cases of this kind is that laid down by Lord Goddard C.J. in R. v. Aves[2], when he said:— 'Where the only evidence is that an accused person is in possession of property recently stolen, a jury may infer guilty knowledge (a) if he offers no explanation to account for his possession, or (b) if the jury are satisfied that the explanation he does offer is untrue. If, however, the explanation offered is one which leaves the jury in doubt whether he knew the property was stolen, they should be told that the case has not been proved, and, therefore, the verdict should be Not Guilty'."

The case of *Rex v. Aves*[2] was a case of receiving; so also was the case of *Rex v. Garth*[3] which preceded it and laid down the same principle. *Rex v. Garth*[3] was in turn referred to in the local case of *Mohamed Yatin v. Public Prosecutor*[4]. In our view, the principles laid down in *Rex v. Aves*[2] are clearly applicable to cases under section 411 of the Penal Code, and the law on this subject is not in doubt although its application may in some cases cause difficulty.

In the present case a majority of the Court was of the opinion that in view of the time which had elapsed since the respondent's conviction, it would not be right in any event to interfere with the order of the High Court setting that conviction aside. No arguments were, therefore, heard upon the merits of the case and no order by this Court will be necessary.

We content ourselves with answering the question asked by the Public Prosecutor by saying that the learned Judge's statement of the law was not correct, and with reiterating that the decision in the case of *Wang Kia Heng v. Public Prosecutor*[1] applies to cases of receiving and is binding upon all Courts in the Federation.

Solicitors for the respondent: *Braddell & Ramani.*

Re ABDUL GHANI

[A. Cr. J. (Buhagiar J.) May 31, 1955]

[K. L. — Criminal Revision No. 11 of 1955]

Immigration Ordinance, 1952, ss. 55(1)(k) and 56 — Entry permit — Passport produced in support of application for — False statement — Whether entry permit issued on strength of passport or on declaration by local sponsor.

The accused was charged with obtaining for one Jaibul Nisa an entry permit by making a false statement, namely that, the said Jaibul Nisa was his wife, and thereby committed an offence under s. 55(1)(k) and punishable under s. 56 of the Immigration Ordinance 1952. Evidence was adduced by the prosecution that at the time he made the declaration as a local sponsor in support of the application for Jaibul Nisa for the grant of a permit to enter and reside in Malaya, Abdul Ghani was not married to her. In support of the application Abdul Ghani produced to the Asst. Controller of Immigration Jaibul Nisa's Indian passport in which she was described as the wife of Abdul Ghani. Eventually the Immigration Authorities issued a permit for her.

At the conclusion of the prosecution case the learned Magistrate found that there was no *prima facie* case made and acquitted and discharged the accused on the ground that the Immigration Authorities issued the entry permit on the strength of the Indian passport.

Held: the entry permit was issued as a result of the declaration which was supported by the passport. The passport was only a corroboration of what was stated in the application. As the declaration was false, an offence under s. 55 of the Immigration Ordinance 1952 has been committed. The case, therefore, be remitted to the learned Magistrate for further proceedings.

CRIMINAL REVISION.

M. Edgar for the accused.

E. Brown (Federal Counsel) for the prosecution.

Buhagiar J.: — Abdul Ghani son of Jallula was charged in the Magistrates' Court as follows:—

"That you on or about the 9th March, 1954, at Immigration Office, Kuala Lumpur, did obtain for one Jaibul Nisa an entry permit No. 000705 (Ref. B/3609/C911) by making a false statement, namely that, the said Jaibul Nisa was your wife, and thereby committed an offence contrary to paragraph (k) of sub-section (1) of s. 55 of the Immigration Ordinance 1952 and punishable under s. 56 of the said Ordinance."